(Testimony of G. Wallace Rynerson.)

A. If you are referring to the markings and type of case, it is the same.

Q. Will you look at the nail holes on the box itself and tell me if that is typical of the box itself of these other boxes?

A. There are a couple of nails in here and nail hole there that might confuse the issue—I don't know.

Q. There isn't any question in your mind, Mr. Rynerson, that this box, 129, had been opened and a top taken off and another top placed on it, or the same top, at another time, is there, [1802] looking at it?

A. I think it will be difficult to put it back and put the nails in exactly the same holes.

Q. When you found that diffigulty existed, what conclusion would you reach?

A. I don't quite understand your question.

Q. In other words, you find a condition where if you try to put this cover on it is apparent it won't fit on other holes on that box——

Mr. Pratt: Just a minute, he didn't testify——

Mr. Faulkner: We will start all over again. Withdraw the question.

Q. After you look at this cover and look in this box, it is apparent to you, is not, Mr. Rynerson, that you cannot put that cover on that box and use all of the nail holes in the cover and in the box?

A. I don't quite get your meaning exactly. If you were putting a new cover on there you couldn't pound the nails back in the same holes.

(Testimony of H. Wallace Rynerson.)

Q. I am asking you if you will take and examine this cover on this particular box. It is apparent that this cover will not use all of the nail holes and nails in this box as it now appears, isn't that correct, in the position in which they appear?

A. If you will allow for a little warping, they will coincide.

Q. These covers were in one piece, weren't they, Mr. Rynerson? A. Yes. [1803]

Q. When you make this box with one piece, with each piece flush with each other, will it take up all the nail holes in the cover and in the box?

Mr. Pratt: I object to that.

The Court: The box is here for the Jury. I will sustain the objection. Proceed.

Mr. Faulkner: Exception.

Q. At any time when you were down there on November 3 or 4, did you examine any butter?

A. No.

Q. Did anyone examine any butter in your presence? A. No.

Q. Was any butter removed from the ship by you as a food and drug inspector, or by Mr. Wirth or by Mr. Bradway?

A. I don't know that Mr. Wirth or Mr. Bradway removed any; I know I didn't.

Q. In your presence? A. No.

Q. You did not even look at the butter on the William Clark? A. No.

Mr. Faulkner: That's all.

(Testimony of G. Wallace Rynerson.)

Redirect Examination

Mr. Pratt: Q. Just one more question, Mr. Rynerson: In your examination of these eggs at these various times, what function were you seeking to perform?

A. Under the Food and Drug Act, we seek to bring about seizure of unfit food or production of those that ship in inter-state commerce.

Q. When you say "unfit food", what do you mean by that? [1804]

A. Food that is filthy, putrid or decomposed.

Q. Unfit for human consumption?

A. That's right.

Q. The record you made of rots in the examination of these ten cases, did you personally examine all of the eggs that were denominated as rots?

A. Yes, I did.

Q. When eggs were indicated by Mr. W th as having been rots, did you personally examine all of those eggs?

A. I examined them as he candled them; except for those I candled myself. I saw each rotten egg he handled.

Q. Each rotten egg? A. Yes.

Q. Was that in furtherance of your functions as a food and drug inspector? A. Yes.

Q. Now, the remaining record that you made of eggs in connection with the examination there, the record that you have in this book, is that the result of the joint activities of you and Mr. Wirth?

A. Yes.

Mr. Pratt: That's all.

(Testimony of G. Wallace Rynerson.)

Recross Examination

Mr. Faulkner: Q. Mr. Rynerson, having in mind the purpose of your presence down there subsequent to the work you did, was any administrative hearing of any kind ever held by the Food and Drug Division of the United States in regard to this shipment of eggs? A. No.

Q. Was there any complaint, civil or criminal, filed by the Food and Drug Division against the firm of Nye & Nissen, or [1805] any other person, in relation to these eggs? A. No.

Q. Was there ever any seizure or libel?

A. No.

Q. Was there ever any seizure or libel?

A. No.

Q. Of any of these eggs? A. No.

Q. Was a sample of any of the eggs ever taken by you as a food and drug inspector?

A. By sample do you designate as a sample any such examination——

Q. Pardon me?

A. There was no physical eggs taken out as a sample and designated as a sample.

Mr. Faulkner: That's all.

Further Redirect Examination

Mr. Pratt: Q. The inedible eggs were all destroyed, weren't they? A. Yes.

Mr. Pratt: That's all.

Mr. Faulkner: That's all.

H. W. BRADWAY,

called on behalf of the Government; sworn.

The Clerk: Q. Will you state your name to the Court and Jury? A. H. W. Bradway.

Direct Examination

Mr. Pratt: Q. Mr. Bradway, where do you live?

A. I live near Los Angeles.

Q. And your occupation?

A. I am an agricultural inspector [1806] employed by the Agricultural Commissioner of Los Angeles County.

Q. How long have you occupied that position?

A. I have since July 1, 1930.

Q. Almost sixteen years? A. Yes.

Q. What has been your experience in connection with the examination of eggs and the determination of the grades of eggs?

A. I have been Agricultural Standardization Inspector for more than eleven years.

Q. What has been your experience in the candling of eggs?

A. I have candled eggs every working day during that time.

Q. For eleven years? A. Yes.

Q. I believe you accompanied Mr. Wirth and Mr. Rynerson on the third of November, was it, in 1943, to Long Beach, to the steamship William S. Clark, is that right? A. Yes.

Q. What did you do on that occasion?

A. We went on board ship and we contacted the

(Testimony of H. W. Bradway.)

steward and went into the hold of the ship, into one of the holds where there were some eggs stored.

Q. How many cases of eggs were there?

A. There were forty cases unopened and one case which had been broken.

Q. Do you know how those cases were broken?

A. Some of the cases had the name "Nye & Nissen" stamped on them. All of the cases which I saw bore the 3737 number; other cases were unmarked.

Q. Did they have the word "Medium" on them?

A. Some cases did, yes.

Q. Was there any Government stamp of any sort on any of these cases? A. No.

Q. Was there any paper label on any of these cases? A. No.

Q. What examination did you make of the eggs that you say were there, forty cases plus a partial case?

A. We candled one entire case and we candled fifteen dozen from each of the five other cases.

Q. And what were the results?

A. I didn't memorize the results; we kept a record at the time.

Q. You have no record personally of what you found?

A. Except a copy that was taken from the original record.

Q. Copy of your original record?

A. That was made by Wirth and Rynerson and myself. [1808]

(Testimony of H. W. Bradyway.)

Q. Did that record express the result of your candling? A. It did.

Q. Who candled the first case in which all the eggs were examined?

A. I did the manual part of the candling.

Q. That is, you personally examined every egg?

A. I personally handled each egg.

Q. Are you able to state what the result was of that candling?

A. I would have to refer to notes.

Q. What is this paper that I have here that I am handing you? Is that a record that you know anything about?

A. That is not in my handwriting.

Q. Do you know anything about that record?

A. No.

Q. That is another case?

A. That is another case.

Q. I direct your attention to this paper, which is Defendants' Exhibit for Identification A-H. Are you familiar with that paper?

A. Yes, this is the copy of our findings at that time.

Q. Who made the record of the findings?

A. Wirth made the record on the first case, and I made the record on the following five examinations.

Q. I call your attention also to this notebook, Mr. Wirth's book, which is marked Defendants' Exhibit A-K for Identification.

Mr. Faulkner: That is Mr. Rynerson's book.

(Testimony of H. W. Bradway.)

Mr. Pratt: Where is Wirth's book? [1809]

Mr. Faulkner: Some place else.

Mr. Pratt: Q. I call your attention to this book of Mr. Wirth's. Does that contain any records made by you?

A. This from here on is in my handwriting.

Mr. Pratt: The witness has referred to Defendants' Exhibit A-G for Identification, a page which I will ask the Clerk to mark as Government's Exhibit for Identification.

(The page in question was thereupon marked U. S. Exhibit 135 for Identification.)

Mr. Pratt: Q. Did you refer to this page that has been marked Exhibit 135 for Identification and the succeeding pages? A. Yes.

Q. How many succeeding pages?

A. Case No.——

Q. How many pages there?

A. Up to and including three pages.

Q. Three pages? A. Yes.

Q. Those are notes you made yourself——

A. Yes.

Q. —of the candling there on the steamship on that third day of November?

A. Yes, they are.

Q. Will you tell the result of the candling as your recollection is refreshed by the entries you made on this paper?

Mr. Faulkner: We object to the question as too general, your Honor. In other words, Mr. Bradway

(Testimony of H. W. Bradway.)

candling one case of eggs and the record was made by Mr. Wirth.

The Court: He made this record, he said. He so testified. [1810]

Q. Did you make this record?

Mr. Faulkner: He did not do the candling.

The Court: Q. Did you do the candling?

A. On Case No. 1 I did the candling and Wirth made the record.

Mr. Faulkner: I do not make a point on that, your Honor. In other words, Mr. Bradway candled the first case. But my objection is he can only state the fact that he made a record of what Mr. Wirth did. He did not candle those eggs.

The Court: Q. What did you and Mr. Wirth do in relation to the rest of those eggs?

A. I saw every egg.

Mr. Faulkner: He has not testified he candled every egg. Of course, he saw every egg.

The Witness: I did not do the mechanical work of candling each egg.

The Court: Tell the Jury what you did.

Mr. Pratt: Q. On the first case——

A. On the first case I candled every egg of the three hundred and sixty in the case.

Q. With what result?

A. The results were three addled eggs, ninety-six Grade B's and two hundred and sixty-one Grade C eggs.

Q. Now, the other cases of eggs, the five other

(Testimony of H. W. Bradway.)

cases, half of which were examined, you say you looked at every egg? A. Yes.

Q. What was the result of your inspection of those eggs as recorded by you at the time? [1811]

Mr. Faulkner: No foundation laid for a record of the candling, your Honor. The witness has said he did not candle them. He looked at the eggs but he did not candle them. Mr. Wirth has already testified to the results of that candling, the man who did it.

The Court: Q. Tell the jury what you did with relation to the eggs?

A. I stood at Mr. Wirth's elbow, and as he candled the eggs, handled them in his hand, I looked at each egg and we made a record at that time of each egg.

Q. And with what results?

A. The results on Case No. 2 were six addled eggs, nine spot rots, thirty three Grade B, and one hundred and thirty-two Grade C.

Q. That is in a half case?

A. That is in fifteen dozen eggs.

Q. Now, the next case, what was the result?

A. We candled fifteen dozen eggs. The result was three addled eggs, twenty-three mold, ten spot rots, twenty-seven Grade B, and one hundred and seventeen Grade C.

Q. And the next case?

A. That was also fifteen dozen. The result was six addled eggs, twenty-nine with mold inside the

(Testimony of H. W. Bradway.)

shell, five spot rots, twenty Grade B, and one hundred and twenty Grade C eggs.

Q. And the next one?

A. That also was fifteen dozen candled. We have four addled eggs, one spot rot, one mold, fifty-one Grade B, and one hundred and twenty-three Grade C. [1812]

Q. And the next one?

A. The next is No. 6. We have four addled, three spot rots, one with mold inside the shell, forty-nine Grade B, and one hundred and twenty-tree Grade C.

Q. Those were all the eggs that you examined on that occasion, Mr. Bradway? A. Yes.

Q. As to the character of these eggs, were they processed eggs? A. No, they were not.

Q. How do you know?

A. Because there was no residue of oil on the shell.

Q. From you examination of these eggs can you state whether they were storage eggs?

A. Yes, they had been held in cold storage.

Q. Can you state from your examination of the eggs the approximate time they were held in storage?

Mr. Faulkner: Same objection made to this line of examination as made when Mr. Wirth was on the stand. This witness is not qualified as an expert in the refrigeration line.

Mr. Pratt: He has qualified as an expert in the handling of eggs for a long period of time, but I

(Testimony of H. W. Bradway.)

will qualify him further in that respect, if your Honor thinks it necessary.

Q. Mr. Bradway, what experience have you had in connection with the handling, the observing of eggs that have been in storage?

A. I have observed storage eggs during the entire storage season each year since I have been Egg Standardization Inspector. I have made tests. I have handled eggs, placed [1813] eggs in storage and held them there as long as a year and observed them once a month or two months during that entire time.

Q. How can you tell whether eggs that you examined have been in storage for a considerable period of time?

A. One indication is a broadening of the air cell band and a discoloring of the albumen of the egg; also a flattening of the yolk and the chalazae becomes distorted.

Q. The what?

A. The chalazae becomes distorted.

Q. How do you spell it and what does it mean?

A. That is the rubber band on each end of the yolk—that is to say, a rubber-like substance that suspends the yolk some place near the middle of the egg.

Q. You have noted the fact that there were spot rots among these eggs. Is there anything in that fact that has anything to do with your judgment in determining whether they have been in storage?

(Testimony of H. W. Bradway.)

A. That is one of the defects that we find in eggs that have been held in the same position over a long period of time.

Q. What do you mean by a long period of time?

A. Well, over a period of several months.

Q. How long were these eggs in storage, to the best of your judgment?

A. I didn't understand the question.

The Court: Read the question.

(Question read). [1814]

Mr. Pratt: Q. How long in your opinion had these eggs been in storage?

A. More than six months.

Mr. Pratt: Cross examine.

The Court: Is there any hope of getting through with this witness?

Mr. Faulkner: No, your Honor.

The Court: I will excuse the jurors until ten o'clock tomorrow morning. Keep in mind the admonition of the Court. You may be excuse.

(Thereupon an adjournment was taken until tomorrow, February 27, 1946, until ten o'clock a.m.)

Wednesday, February 27, 1946, 10:00 a.m.

The Clerk: United States v. Nye & Nissen, on trial.

The Court: Do you waive roll call, stipulating and agreeing that the jurors are present? Proceed.

H. W. BRADWAY,

recalled;

Direct Examination (resumed)

Mr. Pratt: I have a couple of more questions.

Mr. Faulkner: Very well; I understood you were through.

Mr. Pratt: Q. Mr. Bradway, you testified yesterday giving in each of these cases of eggs you examined the number of Grade B eggs and Grade C eggs. Did you find any A eggs? A. No.

Q. Or AA eggs. A. No.

Q. From your examination of these cases of eggs, could any of these eggs, from your experience, have been AA eggs within a period of two or three weeks? A. No, they could not.

Mr. Faulkner: My the answer go out until I object? In other words, that is an ultimate fact, your Honor. The theory under which, as I understand it, the Court has ruled of this evidence is that the witness is permitted to express an opinion in the early part of November of a condition that he saw of certain eggs. Our position, as your Honor knows, is that you cannot have a backward assumption. They have gone further with that assumption.

(Testimony of H. W. Bradway.)

They ask the opinion of [1815] this man of the condition in November. Then they ask him to express an opinion which is a fact for the jury to determine, whether the condition in November was the condition at the time of delivery. That is an ultimate fact in this case for the jury at some phase to determine. The witness has given an opinion as to the quality of the eggs on November 3rd. He has told what he has done, and your Honor permitted it over our objection. Now they go further and they want him to invade the province of the court and jury. I submit the condition of the eggs at the time of delivery is to be determined by the jury from the facts disclosed, not the opinion of a man as to what their condition would have been at a prior time.

Mr. Pratt: The only way the jury can determine the ultimate fact is from the evidence and from the opinions of experts who are qualified to testify as experts. This witness is amply qualified as an expert, and in the opinion of the Goverment he is qualified to answer this question for the enlightenment of the jury.

The Court: Read the question.

(The question and the answer were read by the reporter.)

The Court: The question and answer may stand. Objection overruled.

Mr. Faulkner: Exception.

Mr. Pratt: Q. Mr. Bradway, you have testified, as I said before, that these eggs which you ex-

(Testimony of H. W. Bradway.)

amined, among the [1816] eggs which were down there which were not rotten were either Grade B or Grade C eggs. I wish you would state to the jury from your experience as an expert whether B eggs can be used to poach or to fry, or to eat as boiled eggs?

Mr. Faulkner: We object to that as incompetent, irrelevant, and immaterial, and not one of the issues in this case, whether you can poach an egg or fry an egg.

Mr. Pratt: I think it is a matter that is among the issues in this case as to the character of eggs. In the first place, the invoice of these eggs issued by Nye & Nissen to the Government describes them and charges for them as AA Processed eggs. I think we are entitled——

The Court: It doesn't matter whether they are edible if they are not what they were represented to be.

Mr. Pratt: Well, that is true, your Honor.

The Court: I will sustain the objection.

Mr. Pratt: Q. Did you testify as to the markings on these various cases? A. Yes.

Q. What markings did you find on them?

A. Some of the cases had the word "Medium" stamped on. Other cases had "Nye & Nissen." All cases had the notation, "3737."

Q. The number, "3737," stamped on each case?

A. Yes.

Mr. Pratt: That is all.

(Testimony of H. W. Bradway.)

Cross Examination

Mr. Faulkner: Q. You testified yesterday, Mr. Bradway, [1817] in describing these cases, that some of the cases had the words "Nye & Nissen" stamped on them, "All cases I saw bore the 3737 number and other cases were unmarked." Which were the unmarked cases that you saw?

A. I don't know the number of unmarked cases, but scattered through the shipment were cases without any markings except the number 3737.

Q. When you testified yesterday you did not mention those cases, did you?

Mr. Pratt: Oh, that is——

Mr. Faulkner: Just a minute. I have the page right here.

Q. You referred yesterday to cases that were unmarked, did you not? A. No, I did not.

Q. You did not. All right. You have testified, Mr. Bradway, that you have been a county employee and an agricultural inspector employed by the Agricultural Commissioner of Los Angeles County. A. That's right.

Q. And in which capacity and work, I assume that your work called you to perform functions of whether or not the State of California laws in respect to the quality of certain food stuffs are observed; is that correct?

A. The quality and that grade specifications of eggs are observed.

Q. In that experience you have had a great

(Testimony of H. W. Bradway.)

many occasions to examine the quality of eggs produced by various companies, haven't you?

A. Yes.

Q. In some instances you find the quality is as claimed by [1818] the seller and in some instances you do not; is that correct? A. Yes.

Q. Tell me, on an average, prior to November 3rd, how often you saw and observed eggs that were put out by Swift, Armour, Wilson, Poultry Producers Association—withdraw that. How many firms do you know of, Mr. Bradway, that were engaged in the sale of eggs and purveyors of eggs in Los Angeles County in the year 1943, what companies?

Mr. Pratt: I object to this on the ground I don't see its revelancy. It is certainly not within the range of direct examination. It seems to me we might get very far afield on this line of examination.

Mr. Faulkner: I want to determine what type eggs he has examined to determine quality as an expert in this case.

The Court: For that limited purpose I will allow it. You may answer.

A. There is about 35 firms that operate regularly around Los Angeles.

Mr. Faulkner: Q. That is, in a similar type to Nye & Nissen, you mean?

A. Well, I mean as wholesalers or sellers of eggs.

Q. How often per month would you have to examine eggs as to quality produced by those 35 firms, or any of them?

(Testimony of H. W. Bradway.)

A. Well, as I testified yesterday, my entire time is spent on egg inspections. [1819]

Q. What proportion of the time would you find eggs that did not measure up to quality?

A. I can't tell you as to that.

Q. A great many?

A. It depends on the season of the year.

Q. The ebb season of the year, as far as quality is concerned, is when?

A. Generally in—well, there are two low seasons, generally along about the month of July to September is one of the seasons.

Q. Would you say October?

A. No, I wouldn't say quite that late in the year.

Q. In your experience, gained by you, from July to September would be a period when eggs are at their lowest quality, is that correct?

A. That is correct.

Q. That would be the time when you would find the greatest violations, is that correct?

A. Well, I don't know. I don't remember as to that.

Q. About on an average of how many violations a month would you find in the area you cover of the standards of the State of California, in respect to the sale of eggs.

Mr. Pratt: We object to that question.

Mr. Faulkner: I want to find out how many, and I want to find out what he did to determine them, and I want to find out——

(Testimony of H. W. Bradway.)

The Court: Read the question.

(Question read by the reporter.)

The Court: Objection sustained.

Mr. Faulkner: Exception. [1820]

Q. On how many occasions prior to November 3, 1943, did you have occasion to candle any eggs produced by any company for the purpose of determining their quality in the six-month period prior to November 3rd?

A. During the entire six months?

Q. Yes.

A. It would be approximately 1500.

Q. About 1500. When you had examined those 1500 instances in which a question would arise as to the quality of the eggs how would you candle the eggs?

A. Depending on where the inspection was made.

Q. Would you candle them with a light?

A. Yes.

Q. Did you keep records of those candlings?

A. I did.

Q. In this case you did not keep any record, did you, Mr. Bradway?

A. The one record was kept of the candling by Wirth and I at the time the inspection was made.

Q. Mr. Wirth is not employed in the same department that you are, is he?

A. His duties are same as mine. He is a food inspector for the State of California.

Q. You are a county employee? A. Yes.

(Testimony of H. W. Bradway.)

Q. Did you, as a county employee, preserve any record, did you, by yourself, in respect to this transaction? A. No.

Q. You worked in conjunction with the State inspector, is that right? A. Yes.

Q. You know, do you not, Mr. Bradway, that the statute of the State of California requires on any occasion when there [1821] is any apparent violation of the State Agricultural Code for eggs to be candled and for samples to be taken, don't you?

Mr. Pratt: I object to that. I cannot see any relevancy to it.

Mr. Faulkner: Your Honor, here is a transaction that has been going on for several days in respect to the William Clark. It was never mentioned in the indictment. It is not the subject matter of any substantive count. It is one transaction out of, I would assume, maybe 50,000 transactions which took place during the period. I believe under those circumstances that I am entitled to have as accurate a picture as possible, and I am entitled to show how that transaction occurred on the 3rd of November which is made much of in this case, a man sees the eggs right off the boat, charged with the duty of enforcing the law, and after a complete examination made no effort or claim that any rule, law, regulation or statute was violated.

The Court: Read the question.

(The question was read by the reporter.)

The Court: I will sustain the objection.

Mr. Faulkner: Exception.

(Testimony of H. W. Bradway.)

Q. Did you at any time in connection with the transaction relating to eggs on the William Clark take any sample of the eggs?

A. I didn't take any away from the William H. Clark.

Q. I mean the eggs that you have referred to.

A. I did not [1822] retain any samples.

Q. You took none of the eggs? A. No.

Q. Was any charge of any kind placed by you against the firm of Nye & Nissen in relation to that transaction? A. No.

Q. You have testified among other things here, Mr. Bradway, that the eggs that you saw and observed were not processed. Am I correct in that?

A. Yes.

Q. Can you tell a processed egg from a natural egg? A. Yes, I can.

Q. How do you tell it?

A. I tell it by visual examination.

Q. In respect to visual examination, if you could tell it from visual examination could any other person tell it from visual examination?

A. I don't know as to that.

Q. Describe to me how, when you have a processed egg in one hand and a natural egg in the other, what you will look for in the processed egg to distinguish it from the natural egg?

A. I look for a residue of oil on the shell.

Q. Do you find a residue of oil on a processed egg after it has been processed, we will say, for a period of a month? A. Yes, you do.

(Testimony of H. W. Bradway.)

Q. Is that the natural condition of the processed egg, and would be apparent on the egg, itself, that residue of oil, that is apparent to your eye?

A. Yes, it is.

Q. If you look for oil on an egg and found it you would reach the conclusion that it was processed, is that right?

A. Under certain conditions, yes. [1823]

Q. If you look for oil on the egg and you did not find appearance of oil on the egg what would your conclusion be then?

A. If there was no residue on the shell?

Q. Yes.

A. I would say that it was not a processed egg.

Q. Is there anything else except visual inspection upon which you rely in respect to determining whether an egg is or is not processed?

A. I rely on the use of the candling light.

Q. When you hold the egg to the candling light, describe as fully as you can what the jury or the court would find on candling a processed egg that you would not find in candling a natural egg?

A. Under the candling light the dried residue of oil leaves a sort of mottled appearance of the shell.

Q. A mottled appearance to the shell?

A. Yes. It is very distinctive.

Q. Pardon me?

A. It is very distinctive.

Q. Very distinctive? A. Yes.

Q. You don't require any microscope to see it?

(Testimony of H. W. Bradway.)

A. No.

Q. In other words, what you would expect to find if we had two eggs here, one processed and one natural, and a light, that condition which you have just described would be just as apparent to the jury, for instance, assuming they have eyesight as good as you have?

A. It would be apparent to anyone with experience.

Q. Anyone what? A. With experience.

Q. Why do you have to have any experience to find a definite [1824] thing in a candling light?

A. I presume an inexperienced person might not recognize what they saw. They would see the difference but might not recognize it.

Q. I would like you to describe it as fully and as completely as you can, what a person would look for.

A. I have already described the appearance.

Q. You have nothing to add to it?

A. Not as to that on the question of determining——

Q. It is your view that if a dozen eggs were brought in here, six processed and six natural, that you would be able to pick out the processed eggs as against the natural eggs? A. Yes.

Q. Is that correct? A. Yes.

Q. You would do it by the sight and observation, from visual observation unaided by candling—the visual observation aided by the candle?

A. And by the feel of the egg.

(Testimony of H. W. Bradway.)

Q. What would your sense of feel determine in relation to the processed egg that would not be found in the case of a natural egg?

A. In holding the egg in the palm of your hand a processed egg has a little tendency to stick to the palm of a hand.

Q. A little tendency to stick? A. Yes.

Q. As a matter of fact, Mr. Bradway, the method that inspectors use to determine whether an egg is processed or not is by the use of lampblack, or dropping them into water; isn't that correct?

A. Some years ago we did use lampblack, [1825] but as far as I know it has not been used in the last seven or eight years.

Q. How about water? A. No.

Q. Don't you use that, either? A. No.

Q. Which is the more accurate method of determining whether an egg is processed, the lampblack and water method or the method that you have just described, consisting of the feel of the egg, the observation of the egg, and the holding of the egg to the candling light?

A. They are all methods of determining. In this case the fact they were not processed was so obvious that I didn't use any further method.

Q. I did not ask you that. I said which is the more accurate method?

A. There isn't any difference.

Q. What? A. There is no difference.

Q. There is no difference. At the time you were down there you had seen a copy of the invoice of Nye & Nissen? A. No, I did not.

(Testimony of H. W. Bradway.)

Q. Did you see it in the possession of Mr. Wirth?

A. No. I first saw that yesterday.

Q. At all events, in all of the transactions in which you participated, both in relation to the cases of eggs which you candled, yourself, and the cases of eggs which you saw Mr. Wirth candle, and the eggs that you candled at the firm of Nye & Nissen, or observed candled, and in relation to that whole transaction you did not make a single note or record that the [1826] eggs were or were not processed, did you?

A. Don't misunderstand me. I did not candle any eggs at Nye & Nissen's.

Q. You saw eggs candled?

A. No, I did not. My entire transaction was at the time the inspection was made on board the ship, and directly after that.

Q. Well, I am sorry. It was another man who said he participated in candling ten cases of eggs. You had nothing to do with that?

A. I was not present.

Q. There were seven cases of eggs.

A. There was one case and five part cases that I was in.

Q. In other words, six altogether?

A. Yes.

Q. In your capacity as an employee of the County of Los Angeles, and working with the State Department of Agriculture man, neither you nor he ever made any notation of any kind at the time you were doing any work in respect to those eggs

(Testimony of H. W. Bradway.)

on the subject matter of whether they were or were not processed? A. That's right.

Q. How did you happen to go down there on the William Clark on November 3rd?

A. My presence was requested.

Q. By whom?

A. By State Inspector Wirth?

Q. Wirth? A. Wirth.

Q. When was it requested, what day?

A. On the morning of the 3rd.

Q. On the morning you went down?

A. Yes.

Q. Then you met him down there, is that right?

A. I went [1827] with him from Los Angeles.

Q. Did you, or did Mr. Wirth in your presence, request Mr. Rynerson, of the Food and Drug Administration to acompany you? A. No.

Q. Did you request him? A. No.

Mr. Faulkner: That is all.

Redirect Examination

Mr. Pratt: Q. Mr. Bradway, in determining whether eggs have been processed or whether they are plain eggs, does it make any difference how long previously they had been processed, if that is the fact, if they had been processed? A. No.

Q. You can tell, then, no matter how long previously the processing has been applied?

A. Yes, I can.

Mr. Pratt: That is all.

The Court: Step down. [1828]

ALMO G. ABELL,

called on behalf of the Government; sworn.

The Clerk: Q. Will you state your name?

A. Almo G. Abell.

Direct Examination

Mr. Pratt: Q. Mr. Abell, where is your residence?

A. My residence, home residence, is in Alhambra, California.

Q. What is your occupation?

A. In charge of the Los Angeles Dairy and Poultry Branch of the U. S. Department of Agriculture on inspection and grading work.

Q. You are a Government employee then?

A. I am.

Q. How long have you been engaged in that employment?

A. I have been with the U. S. Department of Agriculture since December 1, 1924.

Q. About twenty-five years or more?

A. Twenty-one.

Q. Twenty-one years or more, yes. And what is the nature of your duties with respect to eggs in particular?

A. I am in charge of the inspectors in the Los Angeles office, and also perform egg grading work myself.

Q. And you had experience in candling and grading eggs, had you?

A. Yes, sir, about seventeen to eighteen years.

(Testimony of Almo G. Abell.)

Q. In November, 1943, I will ask you if you had occasion to visit the steamship William S. Clark in the harbor at Long Beach, California?

A. Yes, sir.

Q. With whom did you go?

A. Mr. Frank Gartenberg. [1829]

Q. Who is Frank Gartenberg? Who was he at the time?

A. At that time he was in charge of the Los Angeles office, Nye & Nissen Company.

Q. And you say that you went at his request? You accompanied him to the ship?

A. I accompanied him in that I was going to Long Beach and met him at the terminal, and so long as he was going down there we decided to go in one car.

Q. When you got to the ship, the William S. Clark, what did you and he do?

A. We went aboard ship——

Mr. Faulkner: This goes in subject to our general objection, your Honor.

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

A. We went aboard the ship and the employees of the galley were there, and Mr. Gartenberg had been asked to check on the eggs, and so we set up the candling light in the galley.

Q. You put the candling light in the galley?

A. It was up off the kitchen.

Q. Off of the kitchen. What did you then do?

(Testimony of Almo G. Abell.)

A. They had some eggs in pans there which they had been using.

Q. You mean eggs that had been broken?

A. No, the eggs were in the shell as well as broken eggs, but they had eggs in the shell in these pans, shell eggs that had not been broken, so we checked—candled those eggs to see what the quality was.

Q. How many eggs were there at that time?

A. It is difficult [1830] to say. There were probably four or five dozen that they had there.

Q. Did you yourself candle those eggs?

A. I candled some, but did not keep a record so long as I was not there in an official capacity. I was just unofficially to check the quality.

Q. And what was the quality of those eggs from your examination?

A. Well, they were B's and C's and various kinds of rots—mold rots and black rots.

Q. You say there were how many dozen eggs in that pan or container?

A. Three to five dozen.

Q. Were there any eggs that had been broken into a container there?

A. Well, they broke some there while we were there.

Q. How many? A. I can't be sure.

Q. Can you tell about how many?

A. Well, they broke some out, but we could do just as well by candling as breaking them out.

Q. Did you observe the eggs that were broken?

(Testimony of Almo G. Abell.)

A. Yes. They were weak and watery and flattened out.

Q. What grade of egg?

A. On the basis of the breakout I would assume they were C's due to the weakness.

Q. Did you use your own candle light at that time? Did you have a candle light with you?

A. I had a candle light in my car, and that is the one we used.

Q. After you had examined these eggs in the galley, these eggs that you have mentioned, several dozen, what did you then do?

A. Well, it was suggested then that they get some out of the [1831] cooler, which was downstairs in their refrigerator box, which would be more representative of the lot, since it was not fair to check on the eggs that happened to be in the kitchen. It was not a fair test. We got some unopened cases from the cooler.

Q. Did you go down to the chill box yourself?

A. I went down to the chill box and the eggs were stacked along the wall there and were in apparently good order.

Q. What was the condition of the chill box as you observed it?

A. The chill box seemed to be cool enough and the humidity was satisfactory, and the eggs were stacked along the wall and away from the other contents.

Q. Do you know what the temperature of the chill box was?

(Testimony of Almo G. Abell.)

A. I wouldn't know for sure, not having checked with the thermometer, but it seemed to be cool enough for the contents.

Q. How many cases were then examined?

A. As I recall, we brought up two which had not been opened.

Q. You brought those cases up from down in the chill box up to the——

A. Candling light.

Q. Up to the candling light that was installed at the kitchen or outside the kitchen?

A. Yes.

Q. You brought up two cases, you say?

A. So long as I did not keep an accurate record myself, I do not recall whether it was two or three.

Q. Did you participate personally in the candling of those [1832] eggs?

A. I candled part of the eggs, and then Mr. Gartenberg took over, since he was making the report.

Q. In each of these cases how many eggs were candled? Do you recall that?

A. I think he candled half a case out of the various ones he reported on.

Q. Did you keep any record of the results of that candling?

A. No, it would be just a matter of recollection that we ran into a loss or two for every four to eight eggs that we picked up, which to my recollection ran ten to twenty per cent.

Q. Of losses? A. Yes.

(Testimony of Almo G. Abell.)

Q. And what do you mean by that?

A. Either mold spots in the pores of the shells or the contents were either mixed rots or black rots.

Q. Would that mean inedible eggs?

A. Inedible.

Q. What portion of the eggs that you saw were inedible?

A. On the basis of that one to two out of every four to eight eggs, it would run ten to twenty per cent.

Q. Were you able to determine whether these eggs were processed eggs or whether they were plain eggs?

A. These eggs were plain eggs, since there was no gloss to the shell, which indicates oil processed eggs.

Q. Are you able to state from your examination of the eggs at that time whether these were storage eggs?

A. The type of breakdown and the percentage of loss indicated that they were storage eggs. [1833]

Q. Were you able to determine how long they had been in storage from the character of the eggs?

A. Well, it would be difficult to say how many months, but they were from the category of storage eggs, and apparently they were six months or older.

Q. Did you find any AA or A eggs among those that you examined? A. No sir.

Q. Those that were edible were of what grade?

A. B and C quality.

(Testimony of Almo G. Abell.)

Q. In your activities that day did you yourself open any of these cases of eggs?

A. Yes, I opened the first case.

Q. I show you a slip of paper here and ask you if you ever saw that before?

A. Yes sir. That is one I removed from one of the cases.

Q. You removed this paper from one of the cases, did you? A. Yes sir.

Q. And you have your identifying marks on the back, have you?

A. I made that at a little later time to identify the date while my memory was still fresh. I made it just as a matter of record.

Q. And this was found in one of the cases of eggs? A. One of the cases.

Q. Where in the case? A. The top layer.

Q. After you had taken the top off?

A. The lid off.

Q. After you had taken the lid off you found this one the top layer? A. Yes sir. [1834]

Mr. Pratt: This is offered in evidence, a candling certificate.

Mr. Faulkner: We object to it as incompetent, irrelevant and immaterial, not binding upon the defendants, and on all the grounds of the general objection, your Honor.

The Court: It may be admitted and marked.

(The document was thereupon received in evidence and marked U. S. Exhibit 136.)

Mr. Faulkner: Did your Honor rule?

(Testimony of Almo G. Abell.)

The Court: I overruled the objection.

Mr. Faulkner: Exception.

Mr. Pratt: Q. Directing your attention to this slip of paper, I notice it is torn. Was it in that same condition when you took it from the case?

A. Yes sir.

Q. What is that paper?

A. That is apparently a candling slip put in there at the time the eggs were candled as an identification in view of the fact——

Mr. Faulkner: I ask that that go out as calling for the opinion and conclusion of the witness.

The Court: It may go out. Indicate what it is.

Mr. Pratt: Q. What is this?

A. It says, "Egg—" and then it is torn—"candling" apparently—"certificate." "The eggs in this—" and then it is torn—"packed and candled and this certificate enclosed and—" words missing—"therein attached to the end of the case [1835] according to law and to the Department of Agriculture, Dairy and Food of Minnesota. Date candled 1-11 by R. K." That is the name or initials of the candler. License Number 855. Elizabeth Creamy Association, Elizabeth, Minnesota.

Q. Dated January 11? A. One-eleven.

Q. At Elizabeth Creamery Association, Elizabeth, Minnesota.

I would like, if the Court please, to hand this around to Jury to observe.

(Exhibit No. 136 was passed to the Jury.)

Mr. Pratt: Q. Mr. Abell, do you know what the

(Testimony of Almo G. Abell.)

custom is, if there is any custom, for candlers to put a notation in the case that they have candled?

Mr. Faulkner: We object to that as calling for the opinion and conclusion of the witness and not binding upon the defendants.

The Court: The objection will be overruled. He may testify as to the custom, if any.

Mr. Faulkner: Exception.

The Witness: A. It is the practice of different firms, some to use candling tickets——

Mr. Faulkner: Your Honor, here is a man in Los Angeles asked to testify to the custom in Minnesota.

The Court: Yes?

Mr. Faulkner: He is not qualified——

The Court: I do not know whether he is or not. I allowed the question. [1836]

Mr. Faulkner: I object to the question on the ground that no foundation has been laid.

The Court: I overruled the objection.

Mr. Faulkner: May I supplement it? That there is no foundation laid in that the witness knows anything about the custom—

The Court: Q. Is there a custom in relation to the subject matter, do you know?

The Witness: A. Your Honor, it varies with different firms, and I imagine, different states; but I can't state specifically in Minnesota that it is compulsory.

Mr. Pratt: I will not press the question further.

Q. Mr. Abell, did you observe the markings on

(Testimony of Almo G. Abell.)

these cases of eggs that were there on that steamship?

A. I made no notations other than that it had a storage lot number on it.

Q. Do you know what that storage lot number was?

A. It was a number that repeated itself, like 3737.

Q. Did you find an egg candling certificate in any other case?

A. That is the only one I noticed in the ones we opened.

Q. What is it?

A. That is the only one I noticed in the ones we opened. It might have been in the other end of the case. In candling we candled half of the case.

Q. This is the only one you saw?

A. Yes sir.

Mr. Pratt: You may cross examine. [1837]

Cross Examination

Mr. Faulkner: Q. Mr. Abell, you have seen many ordinary candling certificates, haven't you?

A. Yes, sir.

Q. That is not typical of an ordinary candling certificate is it?

A. It may be typical in Minnesota in that it has a license number——

Q. I mean the appearance, not the wording. That is not a typical candling certificate, is it, in that form?

(Testimony of Almo G. Abell.)

A. Speaking from the Los Angeles area, each firm may have their own with the candler's number on it.

Q. And is it their practice to tear them like that?

A. Ordinarily they nail them up and tear them off.

Q. Nail them up where?

A. In front of the candlers. They take a pad and nail it up and then the candlers tear them off.

Q. In other words, was this nailed on anything?

A. Not at the time it was in the case. It was in with the eggs. It is the practeie of many firms when they finish with the case to put it in the top layer.

Q. How many cases did you open?

A. I opened the first case.

Q. How many cases were opened in your presence? A. Two or possibly the third one.

Q. Now, when you say possibly a third, do you mean your memory of the transaction is not definite enough to know how many you opened?

A. As I say, I was there unofficially and only opened the first one that was brought up, ran part of the case, [1838] and made a segregation for the loss in part of them, but I did not keep a record. This was the first time I was on a Liberty ship and I was looking at the ship.

Q. Who requested you to go there?

A. Nobody requested me to go there.

(Testimony of Almo G. Abell.)

Q. Didn't Mr. Gartenberg ask you——

A. We met at the terminal. I said I was going to Long Beach. He said he had to go down there, too. I had a candle light and I wanted to go down.

Q. Didn't you go down to the William S. Clark with Mr. Gartenberg of the firm of Nye & Nissen to examine those eggs?

A. No, not to make an official examination of the eggs?

Q. You just went down to see a Liberty ship?

A. I was going to Long Beach on a call to Perkins Creamery.

Q. You went down in his automobile?

A. I went down in a Government automobile.

Q. What? I mean your automobile, the Government's automobile? A. Yes.

Q. It was just a happenstance meeting; you and Mr. Gartenberg went down there together so you could see a Liberty ship and he could do some work, is that right? A. Yes sir.

Q. And who suggested that you examine any eggs, Mr. Abell?

A. Well, while I had the candling light there he said he would use our candle light.

Q. Who suggested to you that you examine any eggs? [1839]

A. I imagine the boys on the ship as much as anything.

Q. Is your testimony based on your imagination?

A. No, they asked to check them and, of course, I looked at part of them, as I would when I am

(Testimony of Almo G. Abell.)

along with anybody, official or unofficial, when they are looking at eggs, even at the terminal dock or anywhere else.

Q. Who requested you to inspect a single egg on on that ship? What person?

A. Probably I volunteered.

Q. You went down there and inspected those eggs with Mr. Gartenberg, isn't that correct?

A. I was along with Mr. Gartenberg on the inspection.

Q. And you were together in the entire transaction on that boat, weren't you?

A. We were together the entire time, yes sir.

Q. What you did, you did in his presence and what he did, he did in your presence, isn't that right?

A. Pretty near the complete deal, yes sir.

Q. When you were through you left the ship didn't you? A. Yes sir.

Q. Were you there in the morning or in the afternoon? A. The morning.

Q. What time in the morning?

A. I imagine we got there about ten o'clock.

Q. When did you leave?

A. Left before they had lunch, because they were setting up lunch there about eleven-thirty.

Q. You stated that in your examination of these eggs you reached a conclusion, an opinion after candling them that some of them graded B, is that right? A. Yes sir.

(Testimony of Almo G. Abell.)

Q. That is your opinion of their quality after candling them, is that correct?

A. Those that I looked at.

Q. And then you reached an opinion that some of them graded C? A. Yes sir.

Q. And that was your opinion after candling them. Then you reached an opinion that some of them had rots in them after candling them, is that correct?

A. It may not be an opinion. I can grade and call them according to grades B, C and Loss.

Q. It was a visual inspection and you reached the opinion that these eggs fell in a certain category? A. By candling, yes sir.

Q. By candling. Were any of the eggs moldy on the outside?

A. Some of the mold spots showed through on the outside of the shell.

Q. Pardon me?

A. The mold spots showed through the pores on the outside of the shells.

Q. How many eggs did you observe in the two or three csaes that you looked at that had mold spots on the outside of the shell?

A. I didn't keep an exact count of those. We classify inedibles as a group.

Q. Where mold spots appear on the outside of a shell you class that as inedible?

A. When it is in the shell. A fuzzy mold [1841] may be on the outside, but it does not of necessity classify that as a loss.

(Testimony of Almo G. Abell.)

Q. Pardon me?

A. Where you have fuzzy mold on the outside it does not of necessity classify as a loss, if the contents do not show mold or decomposition.

Q. Inside? A. That is right.

Q. Did you see any eggs that had fuzz on them?

A. Not the ones I looked at.

Q. Not a single egg?

A. As I say, I didn't make a complete check, since it was not my duty to make that complete check.

Q. Regardless of whether a complete check was made or whether it was or was not your duty, did you see any eggs in those cases that had fuzz on them? A. Not that I recall.

Q. Did you see any eggs that had mold on the outside?

A. Spot mold which showed through the shell, yes sir.

Q. I mean on the external part of the shell you saw mold; that is right, isn't it? A. Yes sir.

Q. Did I understand you to say that from ten to twenty per cent of the eggs you examined did not classify as either B's or C's?

A. I said on the basis of the way I graded, one to two out of every eight eggs would run on to twenty per cent.

Q. You have a big difference there, Mr. Abell.

A. You have a big difference because you may hit two loss, one right after the other, and then you may hit some eggs, a handful, that show no

(Testimony of Almo G. Abell.)

loss. They do not run in a definite ratio throughout [1842] the case.

Q. Do you recall how many eggs you personally candled in the first case that you looked at?

A. I probably looked at around a hundred.

Q. What? A. Around a hundred.

Q. Would you say that the percentage of inedible eggs that you saw in either of those cases would exceed 8.6 per cent?

A. In the one I looked at I would say so.

Q. Your percentage would be ten to twenty per cent, is that right? A. Yes sir.

Q. Out of the one hundred eggs in the first case how many eggs did you find and classify as inedible?

A. I did not keep the count because Mr. Gartenberg continued through the case, finished it up, and then made a count on his report.

Q. Did you find twenty eggs?

A. Well, on the basis that I recall it would run that way in the half case.

Q. In the first case you would say twenty; that your best memory of what happened is that there were twenty eggs that were not edible?

A. In a half-case.

Q. What? A. In the half-case.

Q. You candled one hundred eggs?

A. Yes sir.

Q. That is not a half-case, is it?

A. No sir.

(Testimony of Amo G. Abell.)

Q. That is less than a third. How many eggs in a case? A. Three hundred and sixty.

Q. So there were between a third and a fourth of the case. [1843] What did you do with the twenty eggs that you found were inedible?

A. We just segregated them two ways, and that is the reason I did not keep an accurate count because I was not making a report on it.

Q. Did you put them back in a box?

A. We sorted them to one side and then we candled the good ones into the fillers.

Q. And then they went back into the box, is that right?

A. I don't know what they did with them.

Q. Well, they went back into the fillers?

A. The good ones went back into the fillers.

Q. And the poor ones never went back into the fillers?

A. I don't know what they did with them.

Q. Who was "they"?

A. The stewards were there, the ship employees.

Q. Now then, you then proceeded to do some work on a second box. What did you find there?

A. Mr. Gartenberg carried on the inspection.

Q. Did you observe what he did?

A. I was observing in a general way without keeping any count.

Q. Did he candle them? A. Yes sir.

Q. Did he find any bad eggs?

A. Apparently he did.

Q. About how many?

(Testimony of Almo G. Abell:)

A. I don't have his records, so I wouldn't know.

Q. Well, you saw him there; you were watching him, weren't you?

A. I watched him, but if I didn't keep a record officially— [1844] when I am making a grade officially, I make a grade and sort them according to all the grades and make a recap on my grading memorandum of exactly what I find when I am making a grading. As I say, it was unofficial. I was not requested to make an official inspection, and there wasn't any reason for me to keep an exact count.

Q. You were there to see a Liberty ship?

A. Yes, sir.

Q. You were just looking at eggs in the course of your tour of the boat, is that right?

A. I do that frequently wherever I go, checking with others that may be buying eggs, to see the quality of eggs that are coming in.

Q. Did I understand you to express an opinion of the age of these eggs?

A. An opinion perhaps based on experience in that there were certain indices which indicate whether the egg is fresh or storage.

Q. What were the indications you saw on these eggs that caused you to express a belief that they had been in storage for a period of time?

A. The type of pronounced shrinkage.

Q. The what?

A. The pronounced shrinkage.

Q. The pronounced shrinkage of what?

(Testimony of Alma G. Abell.)

A. Of the contents of the egg.

Q. Of the air cell?

A. No, the shrinkage is of the contents and the air cell becomes larger as the contents shrink. It is the contents that shrink, and the air cell becomes larger, which is an indication of the amount of shrinkage which [1845] has taken place in the contents.

Q. In other words, one of the main methods of classifying an egg is to determine the depth of the air cell, isn't that correct?

A. The air cell, the yolk visibility, and the condition of the white.

Q. One of the main methods is the depth of the air cell?

A. That is more or less an indication of age.

Q. And the deeper the air cell the lower it goes in quality? A. Yes, sir.

Q. Were the air cells in these eggs deep?

A. Yes, sir.

Q. Have you ever seen a freshly laid egg that had been laid on the very day that you have examined it that has an air cell that would be the equivalent of a C egg? A. No, sir.

Q. You have not?

A. Not on the same day.

Q. Even in a week? A. Thin shells.

Q. Thin shells?

A. Thin shells within a week.

Q. Pardon me?

A. Thin shells could show rapid shrinkage.

(Testimony of Almo G. Abell.)

Q. In other words, you have seen eggs where the depth of the air cell within a week after they were presumably laid would give the egg a classification of a C egg, isn't that right?

A. That has come with thin-shelled eggs, but on the basis of thin shells, we grade them down to start with rather than on the——

Q. All right, go ahead?

A. Yes, you could have shrinkage [1846] in your thin-shelled eggs within a week.

Q. How about ordinary eggs laid by chickens in the same ranch at the same time? Have you seen eggs come from the chicken ranch like that within one or two days of the time that the egg was laid and find part of the eggs AA and part of the eggs an air cell the equivalent of a C egg? Have you ever seen that?

A. Not on the basis of air cell.

Q. You have never seen that. What is the deepest air cell that you have seen in an egg that you knew to be less than a week old—a week old? What grade would it have?

A. Well, as I say, there are three factors that influence grade: shell, shrinkage, and yolk visibility, and the combination may throw some of them into B grade. Out of a lot of fresh eggs, due to either shell texture or your shrinkage, with even fresh eggs, you throw them down on shell texture, and certain chickens do produce a weaker white.

Q. Eggs that are in cold storage for six months —have you ever seen eggs that were in cold storage

(Testimony of Almo G. Abell.)

for six months that would grade AA after the storage period had been completed?

A. Very few will run that, and then they are process eggs.

Q. Pardon me?

A. Then they would have to be processed. I have seen no plain eggs that would go AA after six months.

Q. What is the highest grade of a plain egg that you have seen that has been in storage for six months?

A. The majority of [1847] the plain eggs that have been in storage for six months grade B.

Q. Would grade B? What would they have gone in as?

A. We don't know what they go in as unless we look at them going both in and out.

Q. In other words, when you see a Grade B egg that has been in storage six months, you do not from that observation know what the grade of the egg was when it went into storage, do you?

A. If it was a B coming out after six months, it must have been A, at least an A grade going in.

Q. But you do not know, do you?

A. Well, from experience with plain eggs, and common practice with plain eggs to move them as rapidly as possible, as you can, after you have stored them.

Q. Well, the common practice is they would go in, or, rather, they would come out slightly under grade as to the manner in which they went in?

(Testimony of Almo G. Abell.)

A. They go in at a higher grade than they come out.

Q. Pardon me?

A. All eggs go in at a higher grade than they come out. That is particularly with the time interval in there.

Q. What are the conditions in relation to the keeping of eggs that cause the most speedy deterioration? What condition from your experience would you say would cause an egg to deteriorate faster than any other condition?

A. Heat and wind. [1848]

Q. Heat—— A. And wind.

Q. And what? A. Wind.

Q. Assume that a series of cases of eggs were left on a pier on a hot day with the wind blowing through the pier, what would the effect in a one day period of that condition have upon eggs?

Mr. Pratt: I object to this. The hypothesis is not in evidence at all. All this may be defensive; it certainly is nothing that has to do with the direct examination of this witness.

Mr. Faulkner: The witness has testified, your Honor, that in his opinion these are cold storage eggs because of the condition in which he saw them. I want to show from the same witness that other conditions will produce the same effect.

The Court: He indicates that you are assuming a fact not in evidence, namely, that they were on the wharf for a period of time.

Mr. Faulkner: No, your Honor, that is not the

(Testimony of Almo G. Abell.)

point. In other words, we haven't any opportunity of presenting evidence yet. In other words, a man comes into court, whether it is Mr. Abell or someone else, and he says, "I reached a conclusion—"

The Court: In any event, in the interest of time I will allow the question to be answered.

(Question read.) [1849]

A. The effect would be negligible if the eggs had been properly cooled and packed in cases, because in cases stacked together, the wind would not circulate, as I was thinking of terms of fresh eggs that might lay in the nest. In other words, the change in the quality would be negligible on fresh eggs that were properly cooled and packed in cases.

Mr. Faulkner: Q. Whatever the change would be, whether it was negligible or not, would it improve the egg or would it cause it to deteriorate?

A. The egg is at its point of highest quality at the time it is laid, and from then on it is up to the maintenance of that quality, but there is deterioration from the time it is laid, which is the nature of an egg.

Q. Assume that those eggs are then taken into a sling and placed on board a ship and placed in a chill box that on frequent occasions over a 16-day period is out of order; and then sweat accumulates on the eggs, and that fuzz and mold accumulate on the eggs; after the 16-day period what would the effect of those conditions have upon eggs?

A. Well, if they are placed within the refrigerator they should not sweat——

(Testimony of Almo G. Abell.)

Q. I am asking you to assume that they did sweat, that the water was dripping off them and had to be wiped off with a towel; that fuzz was on the eggs and that mold was on the eggs over a 16-day period; what would that condition have upon the quality of the eggs?

Mr. Pratt: I object to that question because it is not [1850] substantiated by the evidence in the case in any way.

The Court: The objection will be sustained.

Mr. Faulkner: Your, Honor, may I be heard on that subject?

The Court: The Court has ruled.

Mr. Faulkner: Exception.

Q. Assume, Mr. Abell, that eggs for a period of sixteen days have been in a chill box that has been out of order, and that the eggs when they came up in the galley by the cook had to be wiped with a towel in order that the mold and the must would not drop into the breaking container; and that the eggs that were in that condition in the galley came from the chill box; what would the condition that produced that mold and stuff that you wiped off with a towel have on the quality of the eggs?

Mr. Pratt: To that I object because again there is nothing to support it.

The Court: The objection will be sustained.

Mr. Faulkner: On that, your Honor, I will get the record. If your Honor sustained the objection in that form——

(Testimony of Almo G. Abell.)

The Court: The Court has ruled. We will now proceed.

Mr. Faulkner: Mr. Pratt said that that is not the record.

The Court: I am not indicating what Mr. Pratt said or did not say.

Mr. Faulkner: But that is his objection. [1851]

The Court: The Court has ruled on his objection. The Court sustains the objection.

Mr. Faulkner: I submit very respectfully, your Honor, that where an objection is made that a question is not founded on the record, that I should be given the permission to read the record to the Court?

The Court: Where is the record?

Mr. Faulkner: Right in this courtroom.

The Court: The jurors will take a recess for a few minutes.

(Recess.) [1851-a]

The Court: You may proceed.

Mr. Faulkner It is from the examination of the witness called by the Government, your Honor, a man named Brown.

Mr. Pratt: What page?

Mr. Faulkner: 1546:

"Did they have anything on them that you could wipe off with a towel? A. Yes.

Q. What was that?

A. Sweat off the box."

On page 1548:

"Q. After you took these eggs that you saw on

(Testimony of Almo G. Abell.)

that ship—withdraw that. Before you used the eggs you would wipe that sweat off, wouldn't you, so it wouldn't drop into the pan or the bowl?

A. That's right.

Q. After you wiped it off of the eggs, what was the appearance of those eggs?

A. They were all right."

Then this:

"Now, Mr. Brown, you were asked this question—"

Mr. Pratt: What page?

Mr. Faulkner: 1553.

"Q. Now, Mr. Brown, you were asked this question, were you not: 'Did you notice anything on the outside of the egg that called your attention to its appearance, anything unusual about the outside of the egg?

A. Eggs is that way, if they ain't kept in a very, very cool place, you understand, naturally they form what you [1852] call a kind of, oh, well, now, wait a minute, let's see. I want to frame it the right way. It was more on the order of mold like, you understand. Some people calls it whiskers, but I don't call it whiskers. It is kind of moss-gathered on there, you understand?

Q. What kind of moss?

A. That is caused from the temperature of the box where they are kept at.

Q. That is superficial, that is, on the top of the shell, isn't it?

A. That is on the top of the shell, yes, sir."

(Testimony of Almo G. Abell.)

Didn't you give those answers to Judge Goodell?

A. I answered that question here a few minutes ago."

Mr. Pratt: If the Court please, he has been corroborated——

Mr. Faulkner: Just a minute, I will read this record, then you can howl.

"Didn't you give those answers to Judge Goodell?

A. I answered that question here a few minutes ago.

Q. Yes, but a few minutes ago you said there was no mold on them.

A. Didn't I tell you I had to use a rag to wipe them off?

Q. You said you had to wipe sweat off but there was no mold on them?

A. That is what I said.

Q. In May, 1944, you told Judge Goodell there was mold on these eggs due to the temperature of the chill box, isn't that right?

A. That question was put to me just like I told you a little while ago— [1853]

"Mr. Pratt: I object to the last question.

"Mr. Faulkner: I will withdraw that question.

Q. When you told Judge Goodell, 'Let me see. I want to frame it the right way. It was more on the order of mold like, you understand. Some peoples call it whiskers, but I don't call it whiskers. It is kind of moss gathered on there, you understand?' Was that the manner in which you were

(Testimony of Almo G. Abell.)

describing to Judge Goodell the sweat that you have been describing in this courtroom?

A. The egg was bad, as I told you. Do you understand?

Q. I understand the eggs were bad.

A. If you don't understand I don't either.

Q. What I want to know, Mr. Brown, is, isn't it a fact that they had whiskers on them?

A. I never made no statement that they had whiskers on them to you.

Q. No, not to me, but you did to Judge Goodell, didn't you?

A. Well, I guess they was trying to put words in my mouth. That is what I said to you awhile ago. I said I'm not going to let you put no words in my mouth.

Q. Then a member of the Attorney General's office asked you this:

'Q. What kind of moss?

A. That is caused from the temperature of the box where they are kept at.'

Do you remember telling him that?

A. I tell you what I tell anybody else. If you kept something [1854] in one of those boxes and the temperature goes down, it causes the stuff in there—vegetables, eggs, or anything—to form a sweat, which it does—meat or anything else.

Q. Yes, the eggs sweat. You know that they sweat, and after they sweat, they form a mold, don't they? They form whiskers, don't they?

A. I said a little while ago I am going to let

(Testimony of Almo G. Abell.)

you or nobody else put words in my mouth to that effect, when I don't say it.

Q. Weren't you asked this question:

'Q. In other words, if you took the egg you had in mind, the one you are describing, and wiped it clean with a towel, it would look like a fresh egg?

A. It would look like a fresh egg.'

Didn't you tell that to Judge Goodell at this deposition on the 18th of May, 1944?

A. Do you want me to describe that to you?

Q. No, sir, I want to know if you told Judge Goodell in May, 1944, if these eggs that had the sweat——

A. That is pretty near two years ago and my memory isn't as good——"

Then he goes on to say:

"A. Did I make a statement to that effect?"

Mr. Pratt: Where is that?

Mr. Faulkner: Line 12, page 1556. [1855]

"Mr. Faulkner: Q. Yes?

A. Did I wipe them clean with a towel?

Q. Yes. A. If that is there.

Q. I will read it to you again:

'In other words, if you took the egg you had in mind, the one you are describing, and wiped it clean with a towel, it would look like a fresh egg?

A. It would look like a fresh egg.'

A. If it had water on it, it would, sure."——

Mr. Pratt: This is the answer.

Mr. Faulkner: The answer is——

Mr. Pratt: That you quoted from the deposition.

(Testimony of Almo G. Abell.)

Mr. Faulkner: "'A. It would look like a fresh egg.'"

Then the answer in the courtroom was:

"A. If it had water on it, it would, sure.

Q. Pardon me?

A. If it had water on it, dew, or anything like that, it would be white on a brown egg. The majority of eggs you handle is all white eggs.

Q. To eliminate that, these particular eggs that had either mold or whiskers on them, or had sweat on them, if you took a towel and wiped it off, it had the appearance of a fresh egg on the outside?

A. Some would and some would not.

Q. Did you give this answer to this question:

'Q. Mr. Brown, did you attempt to wipe any of the [1856] eggs?

A. Well, I can answer it this way, if you will let me, if you want me to. A lot of them eggs that I handled on those other ships—not only ships but anywheres I worked, you understand, some of them, in order to keep dirt or whatever may be hung on the shell, you will take a damp cloth, wipe it off, and keep it from dropping in with the egg, of course."

A. I made that statement.

Q. 'You know, some people are finickly about their eating. The cleaner you serve it the better it will be for all concerned. Sometimes I wipe eggs a great deal.'

Did you give that answer?

A. I have did that.

(Testimony of Almo G. Abell.)

Q. So you have wiped eggs a great deal?

A. I have did that.

Q. What?

A. I say I have did that.

Q. And if you gave any testimony before in this trial that you had not handled many bad eggs before, that would be an error, wouldn't it?

A. Wait a minute, now. You drove your point in there. I am going to tell you mine. I am waiting on the rest of these people and I have to send that food in there clean to them or I am going to eat it myself. What I won't eat myself I won't give you. Is that plain?"

The Court: I would like to ask counsel a question. What [1857] is the purpose of reading this testimony?

Mr. Faulkner: The purpose of reading this testimony is to show the record sustains the position, if the Court please, that that refrigeration on the very ship in question had broken down and the eggs were sweating, that the eggs were moldy, and that the eggs that were carried into the galley were wiped off before they were used. If the court please, if that condition existed I asked the witness to say what effect it would have on the quality of the eggs.

The Court: Did you conclude?

Mr. Faulkner: Not yet, your Honor.

The Court: Proceed.

Mr. Pratt: May I say this at this point, that the witness has not admitted the words of the de-

(Testimony of Almo G. Abell.)

position in regard to whiskers on the eggs. The only thing he has admitted is that the eggs were damp—

Mr. Faulkner: Well, you can——

Mr. Pratt: But there is nothing here that has been read to indicate an admission on the part of the witness that he ever found any whiskers on eggs. He wiped them off and wiped the sweat off. That is all there is in his reply to the question read from the deposition. That is the basis of my objection.

Mr. Faulkner: Then the witness testified as follows:

Mr. Pratt: What page now? [1858]

Mr. Faulkner: Same page.

Mr. Pratt: 1558?

Mr. Faulkner: Yes.

"Q. That is as plain as can be.

A. You just said I didn't wipe them off, and I told you a while ago I did wipe water and stuff off the eggs."

Then we stopped reading to answer Mr. Pratt.

"Q. We will get it even clearer than we have it now. Were you then asked this question:

'Q. What I am getting at is this: You have described the eggs as having what you call a moldy appearance. I want to know, first of all, if you remember wiping off that moldy appearance?

A. Yes.

Q. Did you?

A. The consequence would be after I would wipe

(Testimony of Almo G. Abell.)

it off, you understand, to keep that little dirt from falling in the bowl where I crack it—'

And then that is the end of the answer. All of these eggs that had either a moldy appearance or whiskers on them or sweat on them, you wiped them off, is that right?

A. In order to keep the dirt from going in the bowl.

Q. That is right, but you did wipe them off, am I correct in that?

A. That is correct."

Those are the answers in this courtroom, your Honor.

Mr. Pratt: Still no admission there was any mold or whiskers. [1859]

Mr. Faulkner: That one sentence alone is a proper sentence for the jury and the jury observed, I think, that he was finally broken down and confessed that those eggs were moldy.

"Q. And all of the eggs that you served, were they all wiped off by you before you served them?

A. Some of them didn't need no wiping. Some of them was clean enough and some wasn't.

Q. Do you remember drawing a picture for Judge Goodell, actually drawing the mold or whiskers on an egg at that deposition? Do you remember you drew a picture? You were given a piece of paper and you drew a mold or whiskers on an egg? Do you remember that?

A. No, I don't remember that, but that is what you are trying to get at. I see that. You are

(Testimony of Alma G. Abell.)

trying—he had me show him what an eye or a dark spot in an egg was.

Q. No. I am asking you if you remember drawing a picture for Judge Goodell of the mold or must on the egg?

A. I am no drawer, so I don't remember that.

Q. At all events, you remember you never at any time tried to draw sweat on an egg, don't you?

A. Draw sweat?

Q. Yes. A. I told you I was no artist.

* * * *

Q. In the chill box that you have described or which you have referred to, were there vegetables stored in the same chill box with the eggs?

A. Eggs, cabbage, carrots, turnips—all kinds of vegetables." [1860]

Mr. Pratt: To clarify the situation——

Mr. Faulkner: I still have the floor, Mr. Pratt.

Mr. Pratt: If the court will permit me I would like to make a remark, at this point, in order to save time. It is perfectly apparent from the testimony of the witness Haffel Brown that he found some mold or what-not on some of these eggs. He wiped sweat off of the eggs, but there is nothing in the record to substantiate the over-all assertion by Mr. Faulkner that this chill box had broken down, or that there was any period of time, great period of time, of any substantial degree where the chill box was in anywise defective.

The Court: I may be in error, but your question

(Testimony of Almo G. Abell.)

embodied 16 days. Is there anything in the record here about 16 days?

Mr. Faulkner: Yes, your Honor.

The Court: Where is it?

Mr. Faulkner: The record shows the eggs were delivered on the 18th of October, that is thirteen days in October, and they were examined on the 3rd of November; that is a period of 16 days on shipboard.

The Court: What about that?

Mr. Faulkner: This is the condition that he observed in the 16 days. I am going to show that the chill box was broken down during the voyage, if your Honor will permit me.

The Court: Well, I will ask you now to reframe your [1861] question and we will proceed.

Mr. Faulkner: I will submit the same question as propounded.

The Court: Reframe your question. The objection will be sustained to your former question.

Mr. Faulkner: Exception.

Q. Mr. Abell, what would the effect on the quality of eggs be if it appeared that eggs were put on board a ship and remained there for a period of 16 days and that during that 16-day period they were in a chill box that was out of order and it caused the eggs when they were taken to the galley to be covered with sweat and mold, what would the effect of that condition have on the quality of the eggs?

Mr. Pratt: I object to that, because the hypothesis is not sustained.

(Testimony of Almo G. Abell.)

The Court: Objection sustained.

Mr. Faulkner: Exception.

Q. What has the effect of moisture on the quality of eggs when the moisture is occasioned by a condition in a chill box?

A. The fact that the eggs are sweaty when they are taken out of the chill box would indicate the chill box was adequate refrigeration.

Q. What is that? What has the effect of moisture in a chill box on the condition, on the quality of eggs when taken to the galley for use? What has the effect of moisture acquired [1862] in a chill box on the quality of eggs?

A. The maintenance of high humidity is beneficial to maintaining a high quality or slowing up the rate of evaporation from within the egg, and over a long period of time in storage your moisture develops which has been mentioned here, which would not indicate a loss in the interior content.

Q. Is what you say, Mr. Abell, then, that eggs kept in a chill box under conditions which would be caused in the box, itself, to sweat, the moisture on the surface of the eggs does not deteriorate the quality of the eggs?

Mr. Pratt: I object to this. He didn't say that the moisture occurred in the chill box. The box moisture appeared when the eggs were brought into a warmer temperature.

The Court: He may answer.

The Witness: In the chill box, it is not normal to find the egg sweating in the chill box.

(Testimony of Almo G. Abell.)

Mr. Faulkner: I did not ask you that. I ask you to answer the question that I asked you.

The Court: Let the question and the answer stand. Proceed.

Mr. Faulkner: Exception.

Q. Mr. Abell, in connection with the quality of any eggs, does the egg deteriorate in quality when it is kept in a chill box with a temperature that causes the egg to sweat? Answer that question "Yes" or "No," please.

A. If the eggs sweat it is because they are taken from one temperature to a higher [1863] temperature in a short period of time. In the long holding, over a long period of time, and then sweating and then re-chilling them and holding for a long period of time, for several months, you are further aiding in the development of mold film.

Q. How long would it take mold to form on the outside of an egg that was in a chill box maintained at a proper temperature, what is the shortest time that mold will form?

A. I am not an authority on that. I have not followed through on that.

Q. You don't know the period? A. No.

Q. All right. Do you know the effect of moisture on eggs, and do you know what the effect of moisture on the outside of the egg has to do with the growth of mold?

A. Mold will grow in—the more moisture it has the better it grows.

Q. Do you know how long it takes the mold to

(Testimony of Almo G. Abell.)

form on the outside of a shell and to penetrate the shell?

A. There are two forms of mold, one is the contamination of the egg, itself, and the other a film-like mold that develops over a long period of time in storage; that is more or less normal if eggs have been stored for a considerable period of time, to develop this filmy mold.

Q. The mold penetrates the shell?

A. It does where the contamination is on the shell, itself, then the mold would penetrate.

Q. How long does it take the mold that comes from moisture [1864] being on an egg that is contaminated on its shell to enter the shell?

A. Fresh eggs, it would take considerable time. It is not normally noticed on fresh eggs under two or three weeks.

Q. The period of two or three weeks is based on the experience you have had that mold on the outside of an egg would penetrate the shell.

A. Visually.

Q. Yes.

A. That would be on fresh eggs, yes. I haven't seen it in two or three weeks on fresh eggs.

Q. Have you ever made any examination into that, at all?

A. As I said before, I am not an authority on mold and its development.

Q. You found a lot of mold——

A. Yes, that was the interior mold. That is more common with storage eggs than fresh.

(Testimony of Abner G. Abell.)

Q. The interior mold is caused from the outside of the shell——

A. Yes, like contamination.

Q. Contamination caused from the exterior of the egg? A. Yes.

Q. The egg is not basically contaminated inside?

A. Right.

Q. Regardless of whether the mold that you saw was inside or outside the shell——

A. The filmy mold develops from holding eggs for a considerable time in storage.

Q. But the mold you are talking about is a mold inside the egg?

A. They are two types of mold.

Q. The mold you are talking about is a mold inside the shell of the egg? A. Yes. [1865]

Mr. Faulkner: That is all.

Mr. Pratt: That is all.

Mr. Faulkner: There is one more question. Did I understand you to say that you took that off the case?

A. That was taken from inside the case.

Q. You weren't there on any official business, were you? A. That's right.

Q. How did you happen to take that certificate and preserve it?

A. Just happened to be in my desk and I kept it there because I had checked at the time to see how our office had graded the eggs prior to loading.

Q. In other words, Mr. Abell, you were down there on a tour of a Liberty ship, you saw some

(Testimony of Almo G. Abell.)

eggs, and then you suddenly discovered that you had on your desk this paper?

A. We keep different types of certificates that we run across in our grading program in the States that we work with.

Q. How did it get in your desk?

A. I kept it.

Q. Well, when you weren't on official business down there and saw this type you just put in your pocket this certificate?

A. I was familiar with different types of certificates that are issued by different States that I run across in my course of 20 years.

Q. That is how you got possession of this?

A. I didn't have in mind anything like this, because I didn't go down there looking for trouble.

Q. Now, whom did you give that to? Who was the person you gave this to after it was in your desk?

A. After a period of time an FBI agent came around and was asking for information, and that is when it was given to him.

Q. You gave it to him? A. Yes, sir.

Mr. Faulkner: That is all.

Mr. Pratt: That is all, Mr. Abell.

FRANK GARTENBERG,

called as a witness for the Government; sworn

Direct Examination

Mr. Pratt: Q. Your name is Frank Gartenberg, is it not? A. Yes, sir.

Q. Mr. Gartenberg, where do you live?

A. In Los Angeles.

Q. Are you acquainted with the defendants in this case? A. Yes, sir.

Q. With which of the defendants are you acquainted.

A. Practically all of them, I guess.

Q. Will you point out Mr. Moncharsh? You know him, do you? A. Yes, sir.

Q. Which is Mr. Moncharsh?

Mr. Faulkner: We will identify them.

The Witness: Mr. Moncharsh is sitting at the desk, there.

Mr. Pratt: Q. Do you know Mr. Berman?

A. Yes, sir.

Q. Which is Mr. Berman?

A. The fellow with the glasses, there. [1867]

Q. The fellow with the glasses, the first of the three men?

A. That is right.

Q. Do you know Mr. Goodard?

A. Yes, sir.

Q. Which is Mr. Goodard?

A. The one next to him.

Q. And Mr. Menges, do you know him?

A. Not very well. I have seen him there.

(Testimony of Frank Gartenberg.)

Q. You recognize him, do you?

A. Yes, sir.

Q. As the third man? A. Yes, sir.

Q. Very well. Have you been in the employ of Nye & Nissen Company? A. Yes, sir.

Q. When did you go into their employ?

A. I believe it was in 1940.

Q. Whereabouts? A. In Los Angeles.

Q. What position did you occupy?

A. I was with—I had my office with the Ritz Ice Cream Company, which was a subsidiary of Nye & Nissen, and I was handling the ice cream account, selling, and at the same time selling butter and eggs that Nye & Nissen packed.

Q. You were an employee of the Ritz Ice Cream Company at that time?

A. At that time, yes, sir.

Q. Did you later go into the employ of Nye & Nissen, the corporation which held the interest in the ice cream company?

A. That is right. When they sold the ice cream company I was ordered by Mr. Moncharsh to open an office and establish myself as Nye & Nissen, Los Angeles. [1868]

Q. In that connection did you talk personally with Mr. Moncharsh on the subject.

A. Yes, sir.

Q. Whereabouts?

A. You mean regarding establishing in Los Angeles?

Q. Yes.

(Testimony of Frank Gartenberg.)

A. That order was through a letter.

Mr. Faulkner: Is this offered against all defendants?

Mr. Pratt: I am talking about Mr. Moncharsh.

Mr. Faulkner: I am asking you if you are offering this evidence against all the defendants.

Mr. Pratt: I am offering this evidence as to all the defendants as to the first count of the indictment.

Mr. Faulkner: I submit, your Honor, the conversation between two men in relation to the establishment of a business would not be a conversation in furtherance of a conspirsey, and it could only be a binding on the parties to the conversation at the very best.

The Court: I will allow it as to the first count of the indictment.

Mr. Faulkner: As to all the defendants?

The Court: As to all the defendants.

Mr. Faulkner: Exception.

Mr. Pratt: Will you read the question?

(Record read.)

Mr. Pratt: Q. You had a letter from Mr. Moncharsh? A. Yes, sir. [1869]

Q. Have you got that letter?

A. I believe I have.

Q. At all events, did you then establish a branch office for Nye & Nissen in Los Angeles?

A. Yes, sir.

Q. Where was that office established?

(Testimony of Frank Gartenberg.)

A. At Seventh and Central, Produce Building. That is where the market is.

Q. When did you take office as the manager of that Los Angeles branch?

A. I don't remember the exact time, but I believe it was in 1941.

Q. While you were operating that office did Mr. Moncharsh come down to Los Angeles?

A. Yes sir, on various occasions he visited.

Q. What conversations did you have with him on those occasions when he went to Los Angeles?

Mr. Faulkner: I submit, your Honor, that conversations of that type are not admissible against Mr. Berman, Mr. Menges or Mr. Goddard on any theory of the law.

Mr. Pratt: If the Court please, we have shown a conspiracy, a concert of action among all these defendants.

Mr. Faulkner: That evidence claimed by Mr. Pratt I claim he has not made, but there can be no question that it has been established beyond a peradventure of a doubt that the firm of Nye & Nissen have been engaged in the business over a long period of time.

The Court: We are not concerned about time here. The Court is prepared to rule. I will allow the testimony. [1870]

Mr. Faulkner: Exception. I add the objection that it is hearsay as to the defendants.

The Court: I will allow it as to the first count of the indictment.

(Testimony of Frank Gartenberg.)

Mr. Faulkner: Exception.

Mr. Pratt: Q. What conversations did you have with Mr. Moncharsh on the occasions when he went to Los Angeles, to the office there that you had established?

A. Well, I just—I don't remember exactly what what they were, but they were pertaining to the butter and egg business.

Q. Pertaining to the management of that branch of the business? A. That is right.

Q. Who else was employed at that office of Nye & Nissen in Los Angeles?

A. Mr. Samuel Baum.

Q. Sam Baum? A. That is right.

Q. Who is Sam Baum?

A. He is the son of one of the partners, Baum and Moncharsh. He is the son of Abraham Baum.

Q. Has Abraham Baum any interest, so far as you know, in Nye & Nissen?

A. So far as I know, he is the senior partner, Baum and Moncharsh, Nye & Nissen.

Q. Who else is employed in this office in Los Angeles?

A. Mrs. Dora Weinstein.

Q. Mrs. Dora Weinstein, and who was Dora Weinstein?

A. Dora Weinstein is a sister of Abe Moncharsh.

Q. What did she do there at the office?

A. Well, she took [1871] care of the clerical work?

Mr. Faulkner: I object to that as hearsay as to the defendants, your Honor.

(Testimony of Frank Gartenberg.)

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

Mr. Pratt: Q. What did she do?

A. She took care of the clerical work, and she helped in the management of the branch.

Q. Were there other employees there besides Mrs. Weinstein and yourself and Mr. Baum?

A. Some time later I believe—I don't know for how long—I had an egg candler there that candled eggs.

Q. Does than constitute the entire force then?

A. That is right.

Q. Besides your office did you have a warehouse?

A. I did later on, I believe in 1943, either 1942 or the beginning of 1943, when I had rented a warehouse.

Q. What kind of a warehouse was this?

A. A regular warehouse.

Q. How large a building?

A. Oh, it was about—I think about three to four thousand feet, square feet.

Q. Did you have other employees then?

A. That is when I had another man to help candle eggs.

Q. Are you a candler yourself, Mr. Gartenberg?

A. Yes sir.

Q. What experience have you had in the egg business? What had you had prior to the time that you went with Nye & Nissen? [1872]

A. I practically grew up in this business. My

(Testimony of Frank Gartenberg.)

father was in this business and I naturally worked right into it.

Q. You were accustomed personally to candling eggs? A. Yes sir.

Q. From what age?

A. Well, I believe I started candling eggs when I was about ten.

Q. And you have been doing it ever since?

A. Yes sir.

Q. Do you recall the receipt of a quantity of eggs in January or February of 1943 as manager of the Nye & Nissen branch at Los Angeles?

A. Yes, we received quite a few eggs at that time of the year.

Q. Do you remember certain cases of eggs that were placed in storage at the Terminal Refrigerating Company in February of 1943?

A. Yes sir, I do.

Q. How many eggs came at that time, do you remember?

A. There were two carloads of eggs that came in from Minnesota. One was consigned to Terminal Refrigerating Company and another car was consigned to the National Ice and Cold Storage Company.

Q. And the car that was consigned to the National Ice & Cold Storage Company, did that remain at the plant?

A. No sir. That car at the National contained butter and eggs, and also the eggs were large eggs and medium eggs, and part of the car was butter.